

Washington University Journal of Law & Policy

Volume 22 *Access to Justice: The Social Responsibility of Lawyers | Prison Reform: Commission on Safety and Abuse in America's Prisons*

January 2006

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Recommended Citation

Patrick J. Troy, *No Place to Call Home: A Current Perspective on the Troubling Disenfranchisement of College Voters*, 22 WASH. U. J. L. & POL'Y 591 (2006),
https://openscholarship.wustl.edu/law_journal_law_policy/vol22/iss1/27

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No Place to Call Home: A Current Perspective on the Troubling Disenfranchisement of College Voters

Patrick J. Troy^{*}

Prior to almost every major modern election activists and civic organizations lament the perceived apathy among young people and campaign to boost voter registration rates and promote voter participation in the electoral process.¹ Although the low rate of voter participation is a national problem,² one demographic that is especially, if not surprisingly, underrepresented in the overall electorate is college voters.³

In an effort to combat the problem of low voter participation among young adults, numerous organizations have worked to increase voter awareness through public service campaigns and voter registration drives.⁴ Some of these organizations have focused

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1. See Amber Mobley, *Young Voters a Major Target for Parties for 2004*, BOSTON GLOBE, July 6, 2003, at A14.

2. AMIE JAMIESON ET AL., U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2000, at 11 (2002), available at <http://www.census.gov/prod/2002pubs/p20-542.pdf>. In November 2000 there were 186,366,000 eligible voters in the United States. *Id.* at 6 tbl.B. Of that number, 129,549,000 (69.5%) had registered to vote and 110,826,000 actually voted on election day (59.5%). *Id.*

3. See Mobley, *supra* note 1. In the 2000 presidential election there were 23,915,000 eligible voters between the ages of eighteen and twenty-four. JAMIESON ET AL., *supra* note 2, at 6 tbl.B. Of that group 12,122,000 actually registered to vote (50.7%) and 8,635,000 actually voted on election day (36.1%). *Id.* The largest group of non-voters in the United States is comprised of eighteen- to twenty-four-year-olds. *Id.* at 8 fig.4. During the past twenty-five years the voting members of this group have decreased by about 18%. Today, only 32.3% of young people actually vote. *Id.* at 12 tbl.C.

4. See, e.g., Rock the Vote, About Rock the Vote, http://www.rockthevote.com/rtv_about.php (last visited Sept. 20, 2006). Founded in 1990, this group:

[M]obilizes young people to create positive social and political change in their lives and communities. The goal of Rock the Vote's media campaigns and street team activities is to increase youth voter turnout. Rock the Vote coordinates voter registration drives, get-out-the-vote events, and voter education efforts, all with the intention that young people take advantage of their right to vote.

particularly on college students,⁵ even though individuals within the eighteen- to twenty-four-year-old demographic who attend college are more likely to vote than their peers.⁶

One hypothesis explaining low voter participation rates among college students is that there exists a general apathy toward the political process within this group.⁷ Some theorize that this apathy is due, in large part, to a political process with which students feel no connection.⁸ If students feel that their voice does not count, the theory goes, then why should they bother turning up at the polls?

An important explanation that has been largely ignored, if not actively overlooked, is the political and legal barriers that work to disenfranchise college voters. This note will dispute the widely held belief that apathy and political disinterest are at the core of low voter participation rates for college students. Instead, this note will propose that ever-changing obstacles—including voter intimidation, restrictive residency requirements, and unduly harsh absentee voter regulations—have at least as much, if not more, to do with keeping students from the polls.

Part I of this note discusses the early statutory authority that granted voting privileges to all individuals over eighteen years of age.

Id.

5. See, e.g., Student Voting Rights Campaign—About, <http://www.studentsuffrage.com/about.php> (last visited Sept. 20, 2006) (“The Student Voting Rights Campaign is a network of students and advocates seeking to . . . ensure the right of students to vote where they attend school, and promot[e] the full participation of students in both local and national elections.”).

6. JAMIESON ET AL., *supra* note 2, at 5. The Census Bureau found that:

[C]itizens who had bachelor’s degrees were twice as likely (75 percent) to report that they voted as those who had not completed high school (38 percent). At each level of educational attainment from high school completion and above, voting rates increase significantly. People with bachelor’s and advanced degrees made up 31 percent of those who reported voting in the election, compared with only 9 percent for those who did not graduate from high school.

Id.

7. *Id.* at 10. “[Y]ounger adults (18 to 44 years), . . . and those with more education were more likely to report that they did not vote because they were too busy or had conflicting work or school schedules . . .” *Id.* Overall, 20.9% of registered non-voters did not participate in the 2000 election because they were “too busy,” 12.2% because they were “not interested,” 4% because they “forgot,” and 2.6% because it was “inconvenient.” *Id.* at 10 fig.8.

8. See HARVARD UNIV. INST. OF POLITICS, ARE YOU TALKING TO ME? A GUIDE TO REACHING YOUNG VOTERS (2004), available at http://www.iop.harvard.edu/pdfs/IOP_Voters_Guide.pdf.

Included in this part is a discussion of United States Supreme Court decisions specifically affording college students the right to vote where they attend school. Part II addresses three recent incidents of college voter disenfranchisement. This part will examine specific instances of voter intimidation and restrictive laws with respect to residency requirements and absentee ballot eligibility. Part III analyzes the disconnect, and its rationale, between the law on its face (i.e. that college students have the right to vote where they attend school) and the law as it is applied to systematically disenfranchised college voters. Finally, part IV provides suggestions for streamlining the voting process to ensure greater participation among college voters.

I. THE DEVELOPMENT OF VOTING RIGHTS FOR YOUNG ADULTS AND COLLEGE STUDENTS

Title III of the Voting Rights Act of 1970 first proposed the extension of voting privileges to young adults aged eighteen years and older.⁹ This legislation developed from a congressional effort to increase political participation among young voters.¹⁰

Widespread protest to the Vietnam War by young adults proved a contributing factor in the movement to reduce the voting age.¹¹ Faced with this public opposition to the war, Congress recognized the heightened political awareness of young adults¹² and determined that lowering the voting age would reduce voter apathy.¹³

9. 42 U.S.C. §§ 1973bb–1973bb-4 (2000).

10. Kenneth J. Guido, Jr., *Student Voting and Residency Qualifications: The Aftermath of the Twenty-Sixth Amendment*, 47 N.Y.U. L. REV. 32, 38–44 (1972) (providing a general discussion of Title III of the Voting Rights Act of 1970 and the Twenty-sixth Amendment's legislative history).

11. See 116 CONG. REC. 5, 5950-51 (1970).

To cling to the belief that 18-year-olds are not responsible or sufficiently mature to exercise the right to vote is to fail to face the issue squarely or fairly

18 is the age when young men are told to fight our wars even though they themselves may have no right to choose the officials who make the policies that may lead to war.

Id.

12. *Id.* at 5951. Senator Mansfield stated that:

The validity of Title III was challenged in *Oregon v. Mitchell*.¹⁴ Several states resisted compliance with Title III's provisions because they considered the statute an infringement upon their constitutional right to control their own elections.¹⁵ In a split decision, the Supreme Court held that Congress could fix the age of voters in national elections,¹⁶ but could not set the voting age in state and local elections.¹⁷

While the states relied on Article I, Section 2¹⁸ of the Constitution to support their claim that regulation of elections was solely within their power, the Court reasoned that Article I, Section 4¹⁹ and Article

The colleges and universities are filled with alert minds, eager, willing and able to participate. Permitting them to do so would be a large step forward, not only in bridging the unwarranted gap between 18- and 21-year-olds but in providing a basis for better understanding between the youth of today and the youth of yesterday.

Id.

13. *Id.* at 6959 (“[E]ncouraging . . . participation . . . at an age when they are enthusiastic and interested in government . . . will enable us to make real inroads on voter apathy.”); see also *id.* at 6950:

[T]hose who have a justifiable complaint about our institutions can only be enraged by being totally excluded from attempting to make them work better By extending the franchise to [eighteen- to twenty-one-year-olds] we would be inviting them to test for themselves the strength, flexibility, and responsiveness of the political institutions that have so much to do with shaping their destinies.

Id.

14. 400 U.S. 112 (1970).

15. *Id.* at 117. The challenged provisions of Title III included: first, the lowering of the minimum age of voters from twenty-one to eighteen; second, the prohibition of literacy tests as a means to determine qualified electors; and third, the prohibition of residency requirements as a means to disqualify electors from presidential elections. *Id.*

16. *Id.* Justices Black, Douglas, Brennan, White, and Marshall joined in holding that Congress could set the voting age for congressional, senatorial, presidential, and vice presidential elections. *Id.* at 117–18.

17. *Id.* at 118. Justices Black, Harlan, Stewart, Blackmun, and Chief Justice Burger joined in holding that Congress could not set the voting age for state and local elections. *Id.* Justices Douglas, Brennan, White, and Marshall would have allowed Congress to set the voting age in national, state, and local elections. *Id.*

18. U.S. CONST. art. I, § 2, cl. 1. This clause provides, “The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.” *Id.* Senators were originally to be elected by state legislatures, but the Seventeenth Amendment mandated that senators be elected according to the same system and requirements as representatives. *Oregon*, 400 U.S. at 119.

19. U.S. CONST. art. I, § 4, cl. 1. This clause provides that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State

I, Section 8²⁰ granted Congress the ultimate authority to regulate national elections.²¹ In contrast, the Court held that Article I, Section 2 clearly indicates that decisions relating to state and local elections must be left to state officials.²²

In response to the Court's somewhat dubious holding in *Oregon*, Congress proposed passage of the Twenty-sixth Amendment in 1971.²³ The same justification used to support Title III²⁴ was employed in support of the passage of the Twenty-sixth Amendment.²⁵ The passage of the Twenty-sixth Amendment²⁶ effectively overruled the Court's holding in *Oregon*.²⁷

by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing [sic] Senators."

20. *Id.* art. I, § 8, cl. 18. This clause provides that the Congress shall have the power "[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

21. *Oregon*, 400 U.S. at 123–24. The Court stated that:

In short, the Constitution allotted to the States the power to make laws regarding national elections, but provided that if Congress became dissatisfied with the state laws, Congress could alter them. A newly created national government could hardly have been expected to survive without the ultimate power to rule itself and to fill its offices under its own laws.

Id. at 123.

22. *Id.* at 125–26. In so concluding, the Court stated:

It is obvious that the whole Constitution reserves to the States the power to set voter qualifications in state and local elections, except to the limited extent that the people through constitutional amendments have specifically narrowed the powers of the States. Amendments Fourteen, Fifteen, Nineteen, and Twenty-four, each of which has assumed that the States had general supervisory power over state elections, are examples of express limitations on the power of the States to govern themselves.

Id.

23. U.S. CONST. amend. XXVI, § 1. The amendment provides that "[t]he right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age." *Id.*

24. See *supra* notes 11–13 and accompanying text.

25. 117 CONG. REC. 5, 5815 (1971). Discussing Senate Joint Resolution Number Seven, the Twenty-sixth Amendment's precursor, Senator Taft said,

I believe that the decision of the Supreme Court to uphold the constitutionality of the 18-year-old vote in national elections was a sound one.

It seems logical that this right to vote should be extended to 18-year-olds in State and local elections as well. . . .

Never before has America's youth had a better opportunity to exercise its influence. Today's young people are more highly educated and better informed than ever. . . .

In the immediate aftermath of the Twenty-sixth Amendment's passage, nearly eleven million new voters joined the general electorate.²⁸ More than 50% of eligible voters between the ages of eighteen and twenty-four participated in the 1972 presidential election.²⁹ At the time of the election only 36% of eighteen- to twenty-one-year-olds were enrolled in college.³⁰ Despite this relatively low percentage, states debated where college students would be permitted to vote before ratifying the Twenty-sixth Amendment.³¹ Over the next several years, the right of college

....

Passage of this resolution will give young people who want to make our Nation a better place in which to live, an opportunity and an obligation to become participants in the political process. I believe that our political parties will benefit from increased active participation of young people and respond to their concerns in a meaningful way.

Id.

26. Senate Joint Resolution Number Seven was approved by the Senate on March 10, 1971, and by the House of Representatives on March 23, 1971. *Id.* at 5816. Ratification by thirty-nine of the fifty states was completed by July 5, 1971. Certification of Amendment to Constitution of the United States Extending the Right to Vote to Citizens Eighteen Years of Age or Older, 36 Fed. Reg. 12,725 (July 7, 1971) (to be codified at U.S. CONST. amend. XXVI, § 1).

27. *See Nat'l Treasury Employees Union v. Nixon*, 492 F.2d 587, 612 n.51 (D.C. Cir. 1974).

The Supreme Court is subject to constitutional checks by virtue of the congressional power to impeach and to regulate its appellate jurisdiction and by virtue of the power to amend the Constitution. That latter process, resulting in the Twenty-Sixth Amendment to the Constitution, effectively overruled the Supreme Court's decision in *Oregon v. Mitchell*

Id.

28. *See* Guido, *supra* note 10, at 37–38.

29. PETER LEVINE & MARK HUGO LOPEZ, CTR. FOR INFO. & RESEARCH ON CIVIL LEARNING & ENGAGEMENT, YOUTH VOTER TURNOUT HAS DECLINED, BY ANY MEASURE 9 tbl. (2002), http://www.civicyouth.org/research/products/fact_sheets_outside.htm. Voter participation among eighteen- to twenty-four-year-olds was at 52% in 1972. *Id.* Over the past thirty years there has been an approximately 15% drop-off in voter participation among this age group. *Id.* In 2000 only 37% of eighteen- to twenty-four-year-olds voted. *Id.*

30. Guido, *supra* note 10, at 43.

31. *Id.* at 40–41. In Wisconsin, ratification of the Twenty-sixth Amendment was delayed while the state senate considered legislation that would toughen student residency requirements. *Id.* Similar legislation was proposed in both Illinois and Missouri before the Twenty-sixth Amendment was passed. *Id.* at 41. In all three cases, the legislation did not pass. *Id.* at 40. A primary concern for supporters of this legislation was that college voters would take over the government in their college towns. *Id.* at 41.

students to vote at the place where they attended school was litigated on several occasions.³²

The United States Supreme Court finally addressed the issue of where college students should be permitted to vote in *Symm v. United States*.³³ The Court summarily affirmed the judgment of the district court,³⁴ which held that the Texas voting registrar's practice of refusing to register college dormitory residents unless they established their intention to remain in the community after graduation³⁵ violated the Twenty-sixth Amendment.³⁶

In reaching this decision, the district court relied first on the Fifth Circuit's decision in *Whatley v. Clark*.³⁷ In *Whatley* the Fifth Circuit held that although all voters are required to prove residency for registration purposes,³⁸ the presumption of a non-residency provision

32. See, e.g., *Ballas v. Symm*, 494 F.2d 1167 (5th Cir. 1974); *Walgren v. Howes*, 482 F.2d 95 (1st Cir. 1973); *Dyer v. Huff*, 382 F. Supp. 1313 (D.S.C. 1973); *Ramey v. Rockefeller*, 348 F. Supp. 780 (E.D.N.Y. 1972); *Hershkoff v. Bd. of Registrars of Voters of Worcester*, 321 N.E.2d 656 (Mass. 1974).

33. 439 U.S. 1105 (1979).

34. *Id.* at 1105, *aff'd by a divided court* *United States v. Texas*, 445 F. Supp. 1245 (S.D. Tex. 1978).

35. *Symm*, 439 U.S. at 1105 (Rehnquist, J., dissenting). *Symm*, as the voting registrar in Waller County, Texas, was responsible for registering voters in the county. Evidence showed that *Symm* regularly registered people who were personally known to him or his deputies as well as those individuals who appeared on the tax rolls as owning property in Waller County simply by filling out the state registration form. Individuals who did not fall into either category were required to complete the additional residency questionnaire. *Id.* In relevant part, the questionnaire asked:

Are you a college student? . . . If so, where do you attend school? . . . How long have you been a student at such school? . . . Where do you live while in college? . . . How long have you lived in Texas? . . . In Waller County? . . . Do you intend to reside in Waller County indefinitely? . . . How long have you considered yourself a bona fide resident of Waller County? . . . What do you plan to do when you finish your college education? . . . Own a home or other property in Waller County? . . . Have an automobile registered in Waller County? . . . Have a telephone listing in Waller County? . . . Belong to a Church, Club, or some Waller County Organization other than college related? . . . Where do you live when college is not in session? . . . What address is listed as your home address with the college?

Id. at 1005 n.1.

36. 445 F. Supp. at 1262 (the Court stated that the Fourteenth and Fifteenth Amendments were also implicated).

37. 482 F.2d 1230 (5th Cir. 1973).

38. *Id.* at 1232. The court stated that:

Subsection (a) of Article 5.08 [of the Texas Election Code] provides that, for voting purposes, "residence" shall mean "domicile," and defines domicile as "one's home and

in the Texas Election Code³⁹ was unconstitutional.⁴⁰ The Fifth Circuit's decision was influenced by testimony from students, the Secretary of State, and the voting registrar that registration decisions were being made in a discriminatory and illegal manner.⁴¹ In addition, the court evaluated other student voting rights litigation⁴² as well as data from voter registrars around the state⁴³ to conclude that students could not be required to provide any greater level of proof of their residency than was required from regular voters.⁴⁴

fixed place of habitation to which he intends to return after any temporary absence.” Further, subsection (b) of the same statute requires that residence “be determined by the common law rules as enunciated by the courts of this state,” unless those rules are in conflict with the statute. Texas courts hold that a necessary element of domicile is a “freely exercised intention of remaining at a place *permanently or for an indefinite time*.”

Id.

39. *Id.* at 1231. The statute provides that “‘a student in a school, college, or university’ shall not be considered to have acquired a voting residence at the place where he lives while attending school ‘unless he intends to remain there and make that place his home indefinitely after he ceases to be a student.’” *Id.*

40. *Id.* at 1234. The court did not find the state’s argument that all voters were subject to the same residence and domicile requirements persuasive. If that were the case, the court reasoned there would be no need to have a distinct provision in the election code that only pertained to college students. *Id.* at 1232–33. Therefore, the court held that Article 5.08(k) violated the Constitution’s Equal Protection Clause. *Id.* at 1232–33.

41. 445 F. Supp. at 1248–52. At trial, students testified that Symm informed them that allowing students to register as voters in Waller County would be unfair to permanent residents who had devoted their entire life to the county and who would remain in the county after students had left. *Id.* at 1248. Symm placed military personnel in the same category as students in terms of his belief as to who was permitted to register as a voter. *Id.* The Secretary of State testified that he informed Symm that Article 5.08(k) had been declared unconstitutional in *Whitley* and ordered him to stop using the questionnaire as a means to make registration determinations. *Id.* at 1250. Symm testified that he continued to use the questionnaire because he was uncertain of the Secretary of State’s authority to issue such an order. *Id.* at 1251.

42. See, e.g., *Bright v. Baesler*, 336 F. Supp. 527 (E.D. Ky. 1971) (requiring registrars to ask all applicants the same questions regardless of occupation and mandating that questions must reasonably relate to proof of domicile); *Shivelhood v. Davis*, 336 F. Supp. 1111 (D. Vt. 1971) (holding that students are not required to produce more persuasive evidence of their domicile than any other resident).

43. 445 F. Supp. at 1249–50. Evidence from seventy voter registrars in virtually every county in the state of Texas that contained a college or university indicated that they did not apply a presumption of non-residency with respect to students. *Id.* Furthermore, in no other county were students subjected to greater scrutiny of their registration applications than regular voters. *Id.*

44. *Id.* at 1261.

II. RECENT LITIGATION REGARDING THE RIGHT OF STUDENTS TO VOTE

Despite the Supreme Court's holding in *Symm*, litigation involving a student's right to vote in the jurisdiction where they attend school has continued.⁴⁵ Generally, this litigation falls into one of three categories of alleged behavior: voter intimidation,⁴⁶ restrictive residency requirements,⁴⁷ or discrimination.⁴⁸ These categories are exemplified by incidents at the three schools discussed in this part. In addition, this part examines state legislation that affects a student's right to vote.

A. Georgetown University—1996

In 1996 students at Georgetown University in Washington, D.C., organized a voter registration campaign in response to a growing conflict with community residents.⁴⁹ Between the spring and fall semesters of that year, approximately nine hundred Georgetown students registered as voters in the District of Columbia.⁵⁰ During the fall semester, three Georgetown students filed petitions for placement

45. See, e.g., *Williams v. Salerno*, 792 F.2d 323 (2d Cir. 1986); *Auerbach v. Rettaliata*, 765 F.2d 350 (2d Cir. 1985); *Levy v. Scranton*, 780 F. Supp. 897 (N.D.N.Y. 1991); *Wray v. Monroe County Bd. of Elections*, 595 F. Supp. 1028 (W.D.N.Y. 1984).

46. See, e.g., *Scolaro v. D.C. Bd. of Elections & Ethics*, 691 A.2d 77 (D.C. App. 1997).

47. See, e.g., *Alami v. City of Williamsburg*, No. CL010296-00 (Va. Cir. Ct. filed Mar. 2, 2004).

48. See, e.g., *Op. Tex. Att'y Gen.*, No. GA-0141 (Feb. 4, 2004) [hereinafter *Op. Tex. Att'y Gen.*], available at <http://www.oag.state.tx.us/opinions/ga/ga0141.pdf>.

49. *Scolaro*, 691 A.2d at 79. The voter registration drive commenced in the spring of 1996 and was named "Campaign Georgetown." *Id.* It was organized, in part, to get students more involved in the political process on both a local and national level. *Id.* "During the summer of 1996, the Georgetown [Advisory Neighborhood Commission]" successfully petitioned "the Council of the District of Columbia to pass a bill amending [the district law that had previously] exempted full-time students . . . from registering their automobiles with the District of Columbia Department of Motor Vehicles." *Id.* Beginning October 1, 1996, all students living in Washington, D.C., who wanted to receive residential parking stickers were required to register their cars and pay the corresponding registration fee. *Id.*

50. *Id.* at 79–80. Between three hundred to four hundred students were registered in the spring. *Id.* at 79. The remaining students were registered in the fall semester following the events that occurred over the summer. *Id.* at 80.

on the ballot as candidates for the Georgetown Advisory Neighborhood Commission.⁵¹

In September of 1996 a member of the Georgetown Advisory Neighborhood Commission, Westy Byrd, distributed a flyer on the Georgetown campus warning students of the negative ramifications of registering to vote in Washington, D.C.⁵² Byrd also sent a letter to the Chairman of the District of Columbia Board of Elections calling for an investigation into the Georgetown student voters.⁵³ The chairman responded to Byrd's letter and stated that there was no legal basis for challenging Georgetown student voters.⁵⁴ He also indicated that the content of Byrd's letter suggested voter intimidation in violation of District of Columbia law.⁵⁵

Prior to election day, Byrd again requested an investigation of the Georgetown student voters. The chairman informed Byrd that all

51. *Id.* at 79. Georgetown students Rebecca Sinderbrand, James Fogarty, and Theo Jacobs requested placement on the ballot for the election of Advisory Neighborhood Commission seats held by Georgetown residents Beverly Jost and Patricia Scolaro. *Id.*

52. *See Scolaro v. D.C. Bd. of Elections & Ethics*, 104 F. Supp. 2d 18, 20 (D.D.C. 2000) (plaintiffs filed actions in both district and federal court). The flyer, distributed by Westy Byrd, stated:

If you register to vote in D.C., you will become a legal resident of D.C. As a [r]esident of D.C.,

1. you must pay D.C. income tax
2. you may lose any grant money from your home state
3. you must obtain a D.C. driver's license
4. you must register your car in D.C.

Id.

53. *Scolaro*, 691 A.2d at 80. Byrd requested an investigation of the "'900 Georgetown University Students' recently registered." His letter to the Board of Elections and Ethics and other public officials called for "an immediate and thorough joint investigation by all relevant D.C. agencies to prevent voting by unqualified electors." *Id.*

54. *Id.* Byrd believed that students who had not paid District of Columbia taxes or had not applied for District of Columbia driver's licenses were not entitled to register as voters in the District. *Id.* The chairman, Benjamin Wilson, contested this assertion. *Id.*

55. *Id.* *See* D.C. CODE ANN. § 1-1001.14(a) (LexisNexis 2001 & Supp. 2006). ("Any person . . . guilty of bribery or intimidation of any voter at an election . . . shall, upon conviction, be fined not more than \$10,000 or be imprisoned not more than 5 years, or both."). The Board of Elections and Ethics conducted a hearing to determine whether Byrd had violated the voter intimidation law. *Scolaro*, 104 F. Supp. 2d at 21. After the hearing, the Board referred the matter to the United States Attorney's Office for further investigation, but it ultimately declined to prosecute. *Id.*

challenges must be made at the polling station.⁵⁶ Accordingly, poll watchers for candidate Patricia Scolaro organized lists of students that they planned to challenge on election day.⁵⁷ On election day, the poll watchers unsuccessfully challenged large numbers of students. Scolaro and another Commission member lost their seats to the

56. *Scolaro*, 691 A.2d at 80. At the time, Washington, D.C., law imposed a 90-day cutoff prior to election day for filing written challenges to voters. The law has since been amended to reflect a 45-day cutoff. D.C. CODE ANN. § 1-1001.07(e)(5)(a) (LexisNexis 2001 & Supp. 2006). The law now reads:

Any duly registered voter may file with the Board objections to the registration of any person whom he or she has reason to believe is fictitious, deceased, a disqualified person, or otherwise ineligible to vote Application for the correction of the voter roll or the challenge of the right to vote of any person named on the voter roll shall be in writing and include any evidence in support of the challenge that the registrant is not qualified to be a registered voter. The Board shall issue regulations establishing an expedited procedure for its review of a voter registration challenge or an application for correction of the voter roll filed during the period beginning on the 90th day before an election and ending on the 45th day before an election. The Board shall not accept a voter registration challenge or application for correction of the voter roll after the 45th day before an election.

Id.

57. *Scolaro*, 691 A.2d at 80. Candidates are permitted, by law, to request that poll watchers be present during voting hours as well as while votes are being counted. D.C. CODE ANN. § 1-1001.09(c) (LexisNexis 2001 & Supp. 2006). The law reads:

Any candidate or group of candidates may, not less than 2 weeks prior to such election, petition the Board for credentials authorizing watchers at 1 or more polling places and at the place or places where the vote is to be counted for the next election during voting hours and until the count has been completed. The Board shall formulate rules and regulations not inconsistent with this chapter to prescribe the form of watchers' credentials, to govern the conduct of such watchers, and to limit the number of watchers so that the conduct of the election will not of the election will not be unreasonably obstructed. Such rules and regulations should provide fair opportunity for watchers for all candidates or groups of candidates to challenge prospective voters whom the watchers believe to be unqualified to vote, to question the accuracy in the vote count, and otherwise to observe the conduct of the election at the polling place and the counting of votes.

Id.

Scolaro's designated poll watchers prepared two lists of voters that they wanted to challenge. *Scolaro*, 691 A.2d at 80. One list contained the names of "recent registrants listed in the 1995–1996 Georgetown University Telephone Directory for whom a 'permanent address' outside the District was supplied." *Id.* The second list contained the names of "recent registrants from a list of Georgetown freshman. The poll watchers also prepared a large number of challenge forms with a pre-printed challenge: 'student has not rebutted presumption of home-state domicile with specific evidence of new domicile in D.C.'" *Id.*

student candidates.⁵⁸ Subsequently, Scolaro filed suit alleging that the Board of Elections conduct was unlawful.⁵⁹

Scolaro argued that the voter registration application did not comply with the District of Columbia's statutory requirement that voters reside in the district.⁶⁰ Specifically, Scolaro claimed that the voter registration form only mandated that voters live in the district while election statutes required that a voter reside or be domiciled in the district.⁶¹ Rejecting Scolaro's argument, the court held that the

58. *Id.* at 81–82. Scolaro's poll watcher, Barbara Zartman, made the first challenge against a Georgetown student at approximately 7:30 AM. *Id.* at 81. Using the Georgetown University Telephone Directory, Zartman presented her challenge to precinct captain Sidney Spencer. *Id.* Zartman argued that in the telephone directory the student's permanent address was listed as Homesdale, New Jersey. *Id.* After questioning the student, Spencer decided to sustain the challenge. *Id.* At that point, poll watchers for Fogarty and Sinderbrand as well as Board of Elections member, Valerie Burden, intervened. *Id.* Burden "informed Spencer that a student could defeat a challenge based on the Georgetown Directory simply by declaring the District to be his or her true residence." *Id.* Spencer consulted with the Board of Elections' Executive Director, who instructed him to deny the challenge. *Id.* Over the course of the day Spencer denied numerous similar challenges. *Id.* Zartman had anticipated making eight hundred challenges over the course of the day but ended up making only 368 due to crowding, noise, and the apparent futility of filing such challenges in light of Spencer's decision early in the day. *Id.* Ultimately, Fogarty beat his opponent by 235 votes and Sinderbrand beat Scolaro by three votes. *Id.* at 82.

59. *Id.* at 83. Scolaro had three complaints. First, she alleged that "the Board's voter registration form was invalid under [Washington, D.C.'s] election statute." *Id.* Next, Scolaro argued that by allowing Georgetown students to vote, the Board breached its statutory duty to prevent unqualified electors from voting, "resulting in the unconstitutional dilution" of the voting pool. *Id.* Finally, Scolaro asserted that the Board's rejection of the poll watcher's challenges resulted in a denial of her "constitutional due process rights." *Id.*

60. *See, e.g.,* D.C. CODE ANN. § 1-1311(a) (LexisNexis 1996). "No person shall be registered to vote in the District of Columbia unless: (1) He or she meets the qualifications as a qualified elector as defined in § 1-1302(2) . . ." *Id.* The relevant provisions of section 1-1302(2) read:

(2) . . . [T]he term "qualified elector" means a citizen of the United States:

(A) Who resides or is domiciled in the District, has maintained his or her residence in the District for at least 30 days preceding the next election, and who does not claim voting residence or right to vote in any state or territory . . .

. . . .

(16)(A) The term "residence," for purposes of voting, means the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which the person's habitation is fixed and to which a person, whenever he or she is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of the absence.

Id. § 1-1302(2), (16).

61. *Scolaro*, 691 A.2d at 85. The voter registration form contains the following directions:

application's requirement that voters not claim the right to vote anywhere other than the District of Columbia sufficiently limited voting privileges to those individuals living in the area as residents.⁶²

Scolaro also argued that the Board of Elections had an affirmative duty to prevent vote dilution by screening out ineligible and unqualified electors.⁶³ Acknowledging the right of election officials to reasonably investigate residency declarations, the court found no compelling governmental interest allowing officials to place a discriminatory burden on students to justify their resident status.⁶⁴ In

To register to vote in D.C., you must:

- be a U.S. citizen
- be a D.C. resident
- be at least 18 years old on or before the next election
- not be in jail for a felony conviction
- not have been judged mentally incompetent by a court of law
- not claim the right to vote anywhere outside D.C.

Id.

Farther down the application, voters are required to sign the following Voter Declaration:

I swear or affirm that:

- I am a U.S. citizen
- I live in the District of Columbia at the address . . . above
- I will be at least 18 years old on or before the next election
- I am not in jail on a felony conviction
- I have not been judged "mentally incompetent" in a court of law
- I do not claim the right to vote anywhere outside D.C.

Id.

Scolaro contended that the affirmation, "I live in the District of Columbia," on the Voter Declaration did not comport with the statutory requirement that voters be District of Columbia residents before voter registration is permissible. *Id.*

62. *Id.*

63. *Id.* at 86.

64. *Id.* The Court cited a long list of case precedents holding that residency status inquiries directed specifically at students are unconstitutional:

See . . . Williams v. Salerno, 792 F.2d 323, 328 (2d Cir. 1986) (holding presumption that dormitory cannot be voter "residence" unconstitutional); . . . *Levy v. Scranton*, 780 F. Supp. 897, 903 (N.D.N.Y. 1991) (holding presumption that on-campus living quarters cannot be "residence" for voting purposes unconstitutional); . . . *Sloane v. Smith*, 351 F. Supp. 1299, 1304–05 (M.D. Pa. 1972) (holding required proofs of residence imposing higher burden on students unconstitutional).

fact, the court held that election officials had no statutory duty to make a pre-registration inquiry into a student's residence.⁶⁵

The court went on to find that all registered voters, including students, share a presumption of qualification.⁶⁶ Any individual attempting to challenge the status of a registered voter bears the burden of proving that the voter is unqualified.⁶⁷ If a challenger confronts a voter with evidence that their status as a Washington, D.C., resident is questionable, the burden shifts to the voter to confirm her residency.⁶⁸ The fact-finder should make decisions regarding residency status by assessing the registrant's sworn testimony.⁶⁹ A student who consciously decided to reside in the District of Columbia while attending college can establish residency for voting purposes.⁷⁰ Furthermore, a student need not intend to remain in the district after graduation in order to prove residency.⁷¹

Id.

65. *Id.* at 86–87. After examining the District of Columbia statutes that purportedly imposed an affirmative duty on elections officials to screen out non-resident voter applicants, the Court held that the Board of Elections could legally shift the burden of challenging registered voters onto others. *Id.*

66. *Id.* at 92 (citing Allen v. D.C. Bd. of Elections & Ethics, 663 A.2d 489, 495 (D.C. 1995)).

67. *Scolaro*, 691 A.2d at 92. At this point, the court noted that Zartman's pre-printed challenge forms stating that students had not "rebutted presumption of home-state domicile" were invalid because no such presumption existed. *Id.* However, the court acknowledged that Zartman's efforts to demonstrate that students were actually residents of other states were frustrated by Spencer. *Id.* This led the court to order further evidentiary hearings on the validity of challenged voters. *Id.* at 93.

68. *Id.* According to the court, the following factors may be relevant in determining residency: "[b]usiness pursuits, [e]mployment, [i]ncome [s]ources, [r]esidence for income or other tax purposes, [r]esidence of parents, spouse, and children, [l]easeholds, [s]itus of personal and real property, and [m]otor vehicle registration." *Id.* (quoting D.C. CODE ANN. § 1-1302(16)(b) (LexisNexis 1996)) (internal quotations omitted). Furthermore, official regulations of the District of Columbia Board of Elections and Ethics recognize the following documents as proof of residency: a District of Columbia driver's license or identification card, an employer issued identification card, real estate tax bill or receipt, current utility bill, or current bank statement. *Id.*

69. *Id.* at 93.

70. *Id.* The court specifically stated that a student's testimony may rebut evidence of an out-of-state address listed in the Georgetown University Telephone Directory:

A student, for example, could testify that he or she had consciously decided to change a prior residence to the District out of a realization that he or she would spend most of each of the next few years here, had become concerned about local issues, and therefore had decided to become a voting resident of the District. A trial court could find such testimony credible—and conclusive.

B. College of William & Mary—2004

Students at the College of William & Mary in Williamsburg, Virginia recently faced similar difficulties in their efforts to register as voters.⁷² Unlike the Georgetown litigation, where once-registered students faced a community effort to prevent them from voting, William & Mary students were denied the right to register at all.⁷³

Like the 1996 situation in Georgetown, William & Mary students sought the right to vote in an effort to gain student representation on the Williamsburg City Council.⁷⁴ When the students tried to register in Williamsburg they were required to fill out a questionnaire.⁷⁵ After reviewing their answers, Williamsburg's general registrar, R. Wythe Davis, denied their applications due to a lack of residency.⁷⁶

In response to the denial of their application, students Serene Alami and Travis Lowe filed suit challenging Davis's residency determination.⁷⁷ At a hearing in the Williamsburg Circuit Court each

Id.

71. *Id.* at 93 n.19.

72. See Andrew Petkofsky, *Three More W&M Students File Voting Suits*, RICHMOND TIMES DISPATCH (RICHMOND, VA.), Feb. 28, 2004, at B3.

73. *Id.* Williamsburg's general registrar, R. Wythe Davis, denied the students voter applications. *Id.*

74. *Id.* "The students launched their campaigns this winter after city officials started a new rental-home inspection program and began enforcing other rental-home occupancy rules viewed by students as an interference in off-campus living arrangements." *Id.*

75. *Id.* The city requires all applicants whose permanent residence is in question to fill out a questionnaire asking for personal information. *Id.*

76. *Id.*

77. See *Alami v. City of Williamsburg*, No. CL010296-00 (Va. Cir. Ct. filed Mar. 2, 2004); see also VA. CODE. ANN. § 24.2-101 (2004 & Supp. 2005). Virginia's election laws define a qualified voter as:

"[A] person who is entitled to vote pursuant to the Constitution of Virginia and who is (i) 18 years of age, (ii) a resident of the Commonwealth and of the precinct in which he offers to vote, and (iii) registered to vote. No person who has been convicted of a felony shall be a qualified voter unless his civil rights have been restored by the Governor or other appropriate authority. No person adjudicated incapacitated shall be a qualified voter unless his capacity has been reestablished as provided by law.

"Residence" or "resident," for all purposes of qualification to register and vote, means and requires both domicile and a place of abode. In determining domicile, consideration may be given to a person's expressed intent, conduct, and all attendant circumstances including, but not limited to, financial independence, business pursuits, employment, income sources, residence for income tax purposes, marital status, residence of parents, spouse and children, if any, leasehold, sites of personal and real

student submitted to questioning from attorneys regarding their personal ties to Williamsburg and the state of Virginia.⁷⁸ After listening to each student's testimony, the court ordered that Lowe be registered as a voter but upheld Davis's denial of Alami's voter application.⁷⁹

Most important to the court's determination was the concept of domicile. The court held that an individual who lives in an area with the intent to remain there indefinitely shall be deemed domiciled at that location.⁸⁰ Determining whether an individual intends to remain in a location requires consideration of several factors.⁸¹ In the case of Lowe, the court was ultimately persuaded that his commitment to the Virginia National Guard exhibited his intent to remain in the state indefinitely.⁸²

With respect to Alami, the court was not convinced that she intended to remain in Williamsburg indefinitely.⁸³ In reaching this

property owned by the person, motor vehicle and other personal property registration, and other factors reasonably necessary to determine the qualification of a person to register or vote.

Id.

78. *Alami*, No. CL010296-00 at 6-32, 44-59. Each student was asked questions including whether they served in the Virginia National Guard, whether they intended to remain in Williamsburg indefinitely, whether they received in-state tuition, where they filed their tax return, whether anyone claimed them as a dependent, whether their car was registered in Virginia, whether they lived in a dormitory, where they spent school holidays and summer vacation, whether they had family living in Williamsburg, and whether they owned property in Williamsburg. *Id.*

79. *Id.* at 39, 62.

80. *Id.* at 38.

81. *Id.* The court said that it examined "the acts, statements and conduct" of the individual when determining intent. *Id.* at 63.

82. *Id.* at 38-39. The court stated that:

[Lowe] has an obligation to the Commonwealth of Virginia for six years. Now, he may eventually be able to transfer his obligations to another unit, but for right now at the present time he is a member of the Virginia National Guard. He's attending meetings, and I can't think of anything that would show an intent to remain in the Commonwealth more than being a member of the Virginia National Guard. So accordingly, I direct that he be registered to vote.

Id. at 39.

83. *Id.* at 61-62. Alami's situation was different from Lowe's because Alami's status as a resident of Virginia was not in dispute. Prior to enrolling at William & Mary, Alami had lived with her family in Virginia for her entire life. *Id.* at 62. In this instance, the court was primarily concerned with Alami's intent to remain in Williamsburg indefinitely. *See id.* at 61-63.

decision, the court relied heavily on the fact that Alami lived in a dormitory as well as on her testimony that she intended to pursue the best employment opportunity after graduation irrespective of location.⁸⁴

C. Prairie View A&M University—2004

Another recent case of college voter disenfranchisement was purportedly the result of racial tensions in a small Texas college town. Prairie View A&M University is a predominantly black college with an enrollment of 7000 students.⁸⁵ The university is located in Prairie View, Texas, which has a largely white population.⁸⁶ Students at Prairie View A&M make up approximately 20% of the voting population in the county.⁸⁷

In early 2004 Oliver Kitzman, the Waller County District Attorney, threatened to prosecute student voters.⁸⁸ He argued that it would be improper for students to vote using their school address.⁸⁹ Although tensions between the African American student population and white resident population have long simmered, many students speculate that Kitzman's actions were borne out of racial discrimination.⁹⁰

Responding to Kitzman's request to clarify a student's right to vote, the Texas Attorney General issued an official opinion on the matter.⁹¹ Voting rights, the Attorney General wrote, turned on the issue of whether or not an individual met the statutory definition of

84. *Id.* at 62–63.

85. Terry Kliewer, *Students Head to Polls Early After Dispute*, HOUSTON CHRON., Feb. 26, 2004, at A19.

86. Lianne Hart, *D.A. Challenge of Student Voters is a Civil Rights Lesson*, L.A. TIMES, Feb. 15, 2004, at A37 ("Prairie View is west of Houston, in Waller County, which has a population of 33,591 and is 58% white and 29% African American.").

87. *A New Generation Fights Back Against Minority and Student Voter Suppression*, JACKSON ADVOC. (Jackson, Miss.), Mar. 4–11, 2004, at A6.

88. Hart, *supra* note 86.

89. *Id.* Kitzman "stated in letters that he raised the residency issue because of citizen complaints about voter fraud. His views on student voting, he has said, were based on his interpretation of the election code and case law regarding definitions of 'residence' and 'domicile.'" *Id.*

90. *Id.*

91. Op. Tex. Att'y Gen., *supra* note 48.

“qualified voter.”⁹² The Attorney General asserted that any determination of an individual’s resident status for voting purposes depends on an evaluation of the totality of circumstances.⁹³ In reaching this conclusion the Attorney General stated that it is illegal to treat students any differently than non-students for purposes of voter registration.⁹⁴

92. *Id.* at 3 (quoting TEX. ELEC. CODE ANN. § 11.002 (Vernon 2003)).

In this code, “qualified voter” means a person who: (1) is 18 years of age or older; (2) is a United States citizen; (3) has not been determined mentally incompetent by a final judgment of a court; (4) has not been finally convicted of a felony or, if so convicted, has; (A) fully discharged the person’s sentence, including any term of incarceration, parole, or supervision, or completed a period of probation ordered by any court; or (B) been pardoned or otherwise released from the resulting disability to vote; (5) is a resident of this state; and (6) is a registered voter.

Id.; see also TEX. ELEC. CODE ANN. § 1.015. Texas election law states that:

(a) In this code, “residence” means domicile, that is, one’s home and fixed place of habitation to which one intends to return after any temporary absence.

(b) Residence shall be determined in accordance with the common-law rules, as enunciated by the courts of this state, except as otherwise provided by this code.

(c) A person does not lose the person’s residence by leaving the person’s home to go to another place for temporary purposes only.

(d) A person does not acquire a residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person’s home.

Id.

93. Op. Tex. Att’y Gen., *supra* note 48, at 4. The opinion letter looked to the Texas Supreme Court for the meaning of residence, which:

For voting purposes depends upon the circumstances surrounding the person involved and largely depends upon the present intention of the individual. Volition, intention and action are all elements to be considered in determining where a person resides and such elements are equally pertinent in denoting the permanent residence or domicile . . . Neither bodily presence alone nor intention alone will suffice to create the residence, but when the two coincide at the moment the residence is fixed and determined. There is no specific length of time for the bodily presence to continue.

Id. (quoting *Mills v. Bartlett*, 377 S.W.2d 636 (Tex. 1964)).

94. *Id.* at 5. In coming to this conclusion, the Attorney General looked to the precedent established by the Fifth Circuit Court of Appeals:

The court noted that the statutory presumption illegally treated student voters differently than non-student voters: ‘By its terms it creates a presumption that students are not domiciliaries of the places they live while attending school. Of course, the presumption is rebuttable; but unless a student carries the burden of persuading the voter registrar that he is in fact a domiciliary of the place where he resides for the better part of each year, he is not permitted to vote there and is consequently denied an

Ultimately, the Attorney General concluded that each voter's intention is a primary component of determining whether they are a resident.⁹⁵ Therefore, the Attorney General said, the use of arbitrary criteria to make residency determinations is not allowed.⁹⁶ Following the Attorney General's opinion, large scale protests, and the filing of a federal lawsuit, students eventually were permitted to vote free from threats of prosecution.⁹⁷

opportunity to participate in elections which may have considerably more impact on his life than do those in the area where he resided before becoming a student. Other prospective voters, on the other hand, are not subject to this presumption of nonresidency or to the attendant burden of overcoming it.'

Id. (citing *Whatley v. Clark*, 482 F.2d 1230, 1233 (5th Cir. 1973)).

95. *Id.*

The intention of the voter registration applicant is crucial to a proper determination of residence, and every person is strongly presumed to have 'the right and privilege of fixing his residence according to his own desires.' For example, let us assume that two students, Student A and Student B, live in the same college dormitory. Student A, who is living in the dormitory and is therefore physically present for purposes of voter registration yet intends his residence to remain the same as that of his parents, can permissibly register to vote in the county of his parent's residence. On the other hand, Student B, who is living in the same dormitory as Student A yet who intends that the dormitory be his residence for purposes of voter registration, can permissibly register to vote in the county where his dormitory is located. And the mere fact that an applicant claims a post office box as an address or that many applicants claim the same post office box as an address is not dispositive regarding the determination of residence. Indeed, depending up on the facts in each case, it might not even be relevant.

Id. (citations omitted).

96. *Id.* at 6-7.

[T]he registrar [can] not find that a person [is] a non-resident of Waller County for any of the following reasons:

- A. That such person resides in a dormitory at Prairie View A&M University;
- B. That such person owns no property in Waller County;
- C. That such person is a student at Prairie View University;
- D. That such applicant has no employment or promise of employment in Waller County;
- E. That such applicant previously lived outside Waller County, or may live outside Waller County after his graduation;
- F. That such person visits the home of his parents, or some other place during holidays and school vacations.

Id.

97. Kliever, *supra* note 85.

D. Recent Legislation Regarding the Right of Students to Vote

As individual suits persist, many jurisdictions have passed broader legislation that has simultaneously helped and hurt the student voting rights movement. This legislation has taken the form of regulations relating to absentee voters and same-day voter registration.

Several states, including Illinois, Michigan, Louisiana, Nevada, Tennessee, Virginia, and West Virginia, have enacted laws that require first-time voters to vote in person rather than by absentee ballot.⁹⁸ These first-time voter registration laws may serve to disenfranchise college voters. For example, a college freshman from Michigan who attends school in Virginia may be prevented from voting in a Virginia election while he is home over a break or on vacation. In addition, many jurisdictions in Virginia scrutinize college voters for residency purposes. If this hypothetical student turns eighteen during the fall semester of his freshman year and fails to meet Virginia's residency requirements, he would likewise be barred from voting in his home state of Michigan unless he returns home to vote.⁹⁹

Complicating matters for those students who do choose to vote by absentee ballot are the varied requirements that accompany this choice. Elections laws differ greatly from state to state with respect to procedures for applying for, and utilizing, absentee ballots.¹⁰⁰ Some states allow a lengthy window in which voters may apply for an absentee ballot, while other states restrict this period to just a few weeks.¹⁰¹

98. ELLEN KOLASKY & LORA WONDOLOWSKI, LEAGUE OF CONSERVATION VOTERS EDUC. FUND, NOT HOME, NOT WELCOME: BARRIERS TO STUDENT VOTERS 9 (2004), available at http://www.lcveducation.org/programs/polling-research/LCVEF_PD_Barriers-to-Students-Voting_2004-Rpt.pdf.

99. *Id.* at 9. Michigan also has a state residency requirement law that requires a citizen's voter registration address to match the address on their driver's license which has been viewed as being discriminatory towards college students. *Id.*

100. *Id.* at 9–10.

101. Compare ILL. STATE BD. OF ELECTIONS, ABSENTEE VOTING PROCEDURES 1, available at <http://www.elections.state.il.us/Downloads/VotingInformation/PDF/absevote.pdf> (Illinois State Board of Elections allows individuals to apply by mail for an absentee ballot not more than forty days nor less than five days prior to an election), with NYS Board of Elections, How to Vote by Absentee Ballot, <http://www.elections.state.ny.us> (follow "Voting" hyperlink; then follow "Absentee Voting" hyperlink) (last visited Sept. 20, 2006) (New York State Board

Specifications for completing and returning a valid absentee ballot also vary among states. Alabama requires that absentee ballots be returned by 5:00 PM, the day before an election signed by two witnesses or a notary public.¹⁰² The requirements in Illinois, however, allow for voters to return to ballot by the close of polls on election day and make no mention of the need for witnesses or a notary public.¹⁰³

On the other hand, some states have made voting easier for college students. One measure that has proven extremely successful in improving voter access for college students has been legislation allowing same-day voter registration at polling stations.¹⁰⁴ Currently, seven states allow residents to register to vote on election day.¹⁰⁵ Despite being few in number, these states have seen a marked increase in youth voter participation as compared with the national average.¹⁰⁶ Recently, Representative Martin Sabo, a Democrat from Minnesota, introduced the Same Day Voter Registration Act of 2005 to make same-day voter registration permitted in all fifty states.¹⁰⁷

of Elections requires that individuals apply by mail for an absentee ballot not more than thirty days nor less than seven days prior to an election).

102. Absentee Voting, Alabama Secretary of State, <http://www.sos.state.al.us/election/absentee/> (last visited Sept. 20, 2006).

103. ILL. STATE BD. OF ELECTIONS, *supra* note 101, at 1.

104. KOSLOSKY & WONDOLOWSKI, *supra* note 98, at 16.

105. *Id.* The seven states are Idaho, Illinois, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming.

106. *Id.* Studies have found that:

In these states, youth voting rates have increased by an estimated 14% in presidential election years and an estimated 4% in mid-term elections. In the 2002 elections, 18–24 year olds in Minnesota voted at a rate of 52%, which far exceeded the national average of 23%, in New Hampshire the turnout rate of 18–24 year olds was 24%, in Maine 25%, and in Wisconsin 26%.

Id.; see also DEMOS, ELECTION DAY REGISTRATION 2 (2005), available at <http://www.demos-usa.org/pubs/EDR%20Toolkit3.pdf> (states with election day registration had turnouts 13% higher than other states and 18% higher turnouts for young adults).

107. H.R. 496, 109th Cong. (2005). The proposed legislation seeks to amend the National Voter Registration Act of 1993 to require states to permit individuals to register to vote in an election for federal office on the date of the election. See also Press Release, Martin Olav Sabo, Same Day Voter Registration Legislation Introduced by Congressman Sabo (Feb. 1, 2005), available at <http://www.sabo.house.gov/> (follow “News” hyperlink; then follow “Press Releases” hyperlink; then follow “2005” hyperlink; then follow “van-Feb 2005” hyperlink). Sabo states “Same day registration guarantees that any eligible citizen who shows up at the polls will be able to vote and that vote will count.” *Id.* In the 2004 presidential election,

III. HOW VOTING LAWS OPERATE TO SYSTEMATICALLY DISENFRANCHISE COLLEGE STUDENTS

The more than thirty year struggle of college students seeking the right to vote in college towns is a direct contradiction to the frequently accepted description of eighteen- to twenty-four-year-olds as an apathetic demographic.¹⁰⁸ Quite apart from this notion of college students as politically disinterested, the preceding discussion indicates that many students do not exercise their voting rights because they have trouble navigating the bureaucratic obstacles placed in their way.

The stories of disgruntled college voters at Georgetown, William & Mary, and Prairie View A&M offer strong evidence that today's youth is politically aware. The very fact that these students would engage in a prolonged legal battle to ensure their legal rights demonstrates their dedication to the political process. Recent statistics support the assertion that young voters are becoming increasingly engaged.¹⁰⁹

Minnesota had a 77% turnout rate with 20% of those voters registering on election day. *Id.*

108. See *supra* note 7.

109. Press Release, New Voters Project, Unprecedented Number of Young Voters Register to Vote in Key Battleground States (Aug. 31, 2004), available at <http://www.newvotersproject.org/battlegroundreg>.

With the election just over two months away, young voters are registering to vote in key electoral states in unprecedented numbers, according to state elections officials in several battleground states and organizations working with young voters.

....

... In Ohio, Florida and Pennsylvania, internet-based voter registration campaigns by Rock the Vote and Declare Yourself have netted 67,000 and 54,000 downloaded registration forms respectively.

In many states, election officials believe the increase in voter registration by young adults is changing the face of the electorate and signals increased voter turnout on November 2nd. ...

....

"These numbers echo what we see in surveys of young voters and reflect the growing interest among young people in voting and the elections," said Ivan Frishberg, Communications Director for the New Voters Project. Frishberg added, "These state level numbers are very significant and election officials are taking note. So should the candidates."

The problem of low voter turnout in the eighteen- to twenty-four-year-old demographic is two-fold. First, students remain largely uneducated about the requirements for voter registration and participation.¹¹⁰ Even those students that are aware of the basic legal requirements often get confused by the varying ways in which those requirements are enforced across states.¹¹¹ Second, college students will continue to face obstacles and harassment at the polls as long as reasonable accommodations are not made to aid their participation.¹¹²

The differing and ambiguous standards used to make residency decisions in different states are a major problem for student voters. In Virginia, at William & Mary, the court made a seemingly arbitrary decision based on the judge's own determination of what acts constituted reasonable intent to remain in the jurisdiction. One student was deemed to satisfy the residency requirement because of his commitment to the Virginia National Guard, while another student had her voter application denied because the judge decided her ties to the area were insufficient.¹¹³

In Texas, at Prairie View A&M, the Texas Attorney General declared that students are deemed to have residency for voting purposes if they simply affirm their desire to be residents of a specific

Jehmu Greene, president of Rock the Vote, said, "This year, the new generation is rising to the challenge. More than 500,000 have used Rock the Vote's website to fill out voter registration forms, and we are expecting a dramatic increase in September—which will itself presage a dramatic surge on Election Day. All signs point in that direction."

Declare Yourself, another organization focused on registering young voters, had nearly 22,000 young people in Florida download voter registration forms. In 2000, just 537 votes separated the candidates. "Even before we reached our heaviest periods of outreach and promotion to young voters, we have been astounded by the DeclareYourself.com response," said Cherie Simon, President of Declare Yourself. "Once young people become aware that registration forms can be downloaded online, they begin turning up in very powerful numbers."

Id.

110. HARVARD UNIV. INST. OF POLITICS, *supra* note 8.

111. *Id.*

112. *Id.*

113. See *supra* notes 73–84 and accompanying text (discussing the William & Mary case).

jurisdiction. The Attorney General specified that any independent examination of a student's intent to remain in the area is irrelevant.¹¹⁴

These divergent decisions represent the confusion that students face when registering to vote and by the question of whether students must provide some external evidence of their intent to reside in the area or whether their word is enough. The fact that this question cannot be answered with any certainty is significant because it shows the ambiguity that surrounds regulation of young voter participation. Moreover, the fact that state statutes differ with respect to how absentee ballots may be utilized only heightens voter confusion and serves to worsen the problem.¹¹⁵

In addition to the institutional barriers that inhibit young voters from participating in the political process, college students often face human obstacles as well. Frequently, college students—as a whole—represent a different demographic than their surrounding neighbors.¹¹⁶ In many cases, community members feel that students are a more politically liberal group and that their interests are contrary to the community's well-being.¹¹⁷ Fearing that college students, who may live in the community for only a few short years, will have an inordinate and lasting affect on local politics, the community frequently tries to prevent them from participating in the process.¹¹⁸

The struggle for voting rights at Georgetown University exemplifies this “town-gown” conflict with respect to voter registration. Georgetown is among the wealthiest neighborhoods in the Washington, D.C.¹¹⁹ Conflict between permanent residents

114. See *supra* notes 85–97 and accompanying text (discussing the Prairie View A&M case).

115. See *supra* notes 100–03 and accompanying text.

116. See, e.g., *supra* notes 85–87 and accompanying text.

117. Doug Israel, *Barriers to Voter Registration*, GOTHAM GAZETTE (N.Y., N.Y.), Oct. 2004, available at <http://www.gothamgazette.com/article/20041004/17/1137> (“Students are . . . in many cases more liberal, than the average person living and working in the towns and county surrounding a university.”).

118. See *supra* notes 49–71 and accompanying text (discussing the Georgetown case); see also Nichola W. Tucker, *Students Can Vote in New Hampshire Whether Republicans Like It or Not*, DARTMOUTH FREE PRESS (Mass.), Oct. 29, 2004, available at <http://www.dartmouth.edu/~thepress/read.php?id=697>.

119. Joanne Aitken, *Save Our Structures*, PHILA. CITY PAPER.NET Mar. 11–17, 2004, <http://citypaper.net/articles/2004-03-11/cityspace.shtml>.

seeking to protect their neighborhood and university students is common.¹²⁰ Efforts by permanent members of the community to prevent students from registering to vote in the District of Columbia has prevented students from participating in the political process on both a local and national level. As long as this very common conflict continues in college towns around the country students will remain disenfranchised.

IV. HOW TO ENSURE GREATER PARTICIPATION AMONG COLLEGE VOTERS

The path to improving voter participation among college students is both simple and complex at the same time. Research shows that easier voting methods have a direct correlation to increased voter participation among young adults.¹²¹ That said, some standards must remain intact to protect the integrity of the election process.

Wholesale abandonment of voter identification standards is not an appropriate remedy to the problems faced by college voters.¹²² Although young voters are frequently a more transient demographic, as they leave their homes to pursue educational and employment opportunities, it is not realistic to expect that voter identification requirements be discontinued to accommodate this fact of life. Mandating that prospective voters provide some form of valid identification is an integral part of ensuring the truthfulness of elections and protecting against voter fraud. Activists who challenge these standards as being discriminatory against young voters are fighting the wrong battle. What can be done, however, is to adopt measures that will increase voter education and allow for greater access to the polls without jeopardizing the reliability of the election process.¹²³

120. See, e.g., Vidhya Murugesan, *Residents Urged to Videotape Students*, HOYA (Wash., D.C.), Jan. 27, 2004, available at <http://www.thehoya.com/news/012704/new3.cfm>.

121. Mary Fitzgerald, *Easier Voting Method Boost Youth Turnout* 6 (Ctr. for Info & Research on Civil Learning & Engagement, Working Paper No. 1, 2003), available at <http://www.civicyouth.org/PopUps/WorkingPapers/WP01Fitzgerald.pdf> ("some alternative voting procedures have a significant and positive impact on youth turnout").

122. See *supra* note 68 for examples of the types of identification accepted.

123. But cf. KOLASKY & WONDOLOWSKI, *supra* note 98, at 9 (discussing Michigan law that requires the address on voters' driver's licenses to match the address on their voter

Organizations like Rock the Vote¹²⁴ and the Student Voting Rights Campaign¹²⁵ are working to educate young voters about their political rights. While these organizations frequently focus on registering as many young voters as possible,¹²⁶ it is equally important that they devote significant resources to educating those voters who may already be registered but remain unsure of how to exercise their rights. Educating voters about the varied requirements of voting absentee is a vital component of ensuring greater election participation among the younger demographic.

The obligation to improve access to the polls must not fall solely on the shoulders of public interest groups. Institutional changes encouraged by elections officials and legislators can, and should, serve to improve voting conditions for young people. The changes should deal with both the physical and mental barriers that discourage young voters from going to the polls.

If young voter participation is to be a true priority, elections officials need to ensure that college voters have free access to the polls. One way to provide this access is to place polling stations either directly on campus or in the immediate vicinity.¹²⁷ For students who may not have ample means of transportation, removing some of these physical difficulties associated with off-campus polling stations will likely lead to higher participation rates.

Moving polling stations on campus may have the ancillary effect of eliminating some of the psychological barriers that inhibit college voters. In an ideal world, college students and the permanent residents in their surrounding community would not view their interests as being diametrically opposed. Preferably, they would co-exist peacefully. As exemplified by the university students at Georgetown, William & Mary, and Prairie View A&M, however, this utopia is less than common. Placing polling stations on campus, therefore, reduces the likelihood that students will face hostile

registration).

124. Rock the Vote, <http://www.rockthevote.com/home.php> (last visited Sept. 20, 2006).

125. Student Voting Rights Campaign, <http://www.studentsuffrage.com> (last visited Sept. 20, 2006).

126. See *supra* notes 124 (follow “Register to Vote” hyperlink), 125 (follow “about svrc” hyperlink).

127. KOLASKY & WONDOLOWSKI, *supra* note 98, at 15.

community members when trying to cast their vote. To the extent that such encounters are unavoidable, elections officials and poll watchers must vigorously enforce voter intimidation statutes.

Lastly, Congress should consider enacting the type of legislation proposed by Representative Sabo. Allowing for same-day voter registration in every state provides greater opportunities for all citizens, and especially college students new to the political process, to exercise their voting rights. As studies show, the easier it is to navigate the maze of election processes, the higher the rate of participation among young people.¹²⁸

V. CONCLUSION

Since the 2000 presidential election procedures for holding elections have come under great scrutiny. Politicians and citizens are committed to ensuring that all eligible Americans are permitted to vote and that their ballot will be counted. To be sure, college students and other young voters are a demographic that has been plagued by disenfranchisement.

Despite these issues, the good news is that the disenfranchisement of young voters is a problem that can be solved. Through the clarification of existing election laws, the enforcement of voter intimidation statutes, and the adoption of voting access legislation young voter participation rates will almost certainly rise. This increase will ensure that election results are representative of every demographic, and help young adults shed the stigma of being politically disinterested.

128. *See supra* note 121.